



19 AUG 2002

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In re Application of :
VO-DINH :
U.S. Application No.: 09/890,047 : DECISION
PCT No.: PCT/US00/02051 :
Int. Filing Date: 25 January 2000 :
Priority Date: 25 January 2000 :
For: ADVANCED MULTIFUNCTIONAL :
MULTISPECTRAL BIOSENSOR :
DEVICES AND METHODS OF USE :

This decision is in response to applicant's "Comments Regarding Refiling and Request for Refund" filed 29 April 2002 in the United States Patent and Trademark Office (USPTO). The correspondence is being treated as a petition under 37 CFR 1.8. No petition fee is required.

BACKGROUND

On 25 January 2000, applicant filed international application PCT/US00/02051. A Demand for international preliminary examination, in which the United States was elected, was not filed prior to the expiration of nineteen months from the priority date. Accordingly, the twenty-month period for paying the basic national fee in the United States expired at midnight on 25 September 2001.

On 25 July 2001, applicant filed a transmittal letter for entry into the national stage in the United States which was accompanied by the requisite basic national fee as required by 35 U.S.C. 371(c)(1). An oath or declaration as required by 35 U.S.C. 371 (c)(4) was not filed.

On 27 September 2001, applicant was mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) informing applicant of the need to provide a signed oath or declaration of the inventors, in compliance with 37 CFR 1.497(a) and (b), identifying the application by the International application number and international filing date. Applicant had prepaid the surcharge for providing an oath or declaration later than twenty months from the priority date.

On 29 April 2002, applicant filed the papers considered herein; namely a combined declaration and power of attorney; a change of correspondence address; a petition for a four-month extension of time; authorization to deduct the four-month extension of time payment; copies of previously filed papers and a copy of a facsimile transmission report for 20 November 2001.

DISCUSSION

37 CFR 1.8(b) states:

In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the Patent and Trademark Office, and the application is held to be abandoned or the proceeding is dismissed, terminated, or decided with prejudice the correspondence will be considered timely filed if the party who forwarded the correspondence:

(1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;

(2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and

(3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Commissioner to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

As to item (1), applicant has provided a signed statement that counsel was first informed that the previous transmission was not received by the USPTO on 26 April 2002 and filed the present petition on 29 April 2002, thus satisfying item (1) above;

Regarding item (2), applicant has provided an additional copy of the papers originally transmitted;

As to item (3), counsel has attested to personal knowledge regarding the facsimile transmission of an executed combined declaration and power of attorney on 20 November 2001 and included a copy of the transmission report confirming a successful transmission.

Applicant has thus satisfied all three items above and it is proper to grant the petition at this time. The four-month extension of time petition fee of \$1,440.00 will be refunded to Deposit Account No.: 50-0951. Further, a review of the application file reveals that all of the requirements of 35 U.S.C. 371 for entry into the national stage in the United States have been satisfied.

CONCLUSION

Applicant's petition under 37 CFR 1.8 and request for refund is **GRANTED**.

As discussed above, \$1,440.00 will be refunded to Deposit Account No.: 50-0951.

This application has an international application filing date of 25 January 2000 and will be given a date of **29 April 2002** under 35 U.S.C. 371.

This application is being returned to the DO/EO/US for further processing in accordance with this decision.



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